

PETER PANRUK

IBLA 77-278

Decided September 19, 1979

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application F-17820.

Affirmed.

1. Alaska: Native Allotments -- Settlements on Public Lands

An allotment right is personal to one who has complied with the laws and regulations. An applicant for a Native allotment may not rely on or tack on use and occupancy of the land by his ancestors to establish his right.

2. Alaska: Native Allotments -- Settlements on Public Lands -- Withdrawals and Reservations: Generally -- Withdrawals and Reservations -- Effect of

A Native allotment applicant, who was 5 years old at the time when the land was withdrawn from all forms of appropriation, is properly deemed to be incapable as a matter of law of having exerted independent use and occupancy of the land to the exclusion of others prior to the withdrawal and consequently the allotment application is properly rejected.

3. Alaska: Native Allotments -- Settlements on Public Lands

Public Land Order No. 2213 of Dec. 8, 1960, establishing the Kuskokwim National Wildlife Range withdrew certain lands from all forms of appropriation under the public land laws,

and although such order preserved to Natives the right to hunt, fish, and trap thereon, the lands were no longer subject to initiation of rights under the Native Allotment Act once the order became effective.

4. Administrative Procedure: Hearings -- Evidence: Generally -- Hearings

Where legal conclusions are reached in an appellate decision upon undisputed facts, and there has been no proffer of further facts which could compel different legal conclusions, no useful purpose would be served for a hearing, and a request therefor is properly denied.

APPEARANCES: Norman A. Cohen, Esq., Alaska Legal Services Corporation, Bethel, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Peter Panruk has appealed from a decision dated March 24, 1977, by the Alaska State Office, Bureau of Land Management (BLM), rejecting his Native allotment application F-17820 (Anch.).

Appellant's allotment application was filed on April 6, 1972. 1/ Appellant, who was born on June 10, 1949, claimed seasonal use of the land for hunting, fishing, and trapping from May 1959.

The decision of BLM states that the lands described in the application were "withdrawn" 2/ on January 19, 1955, when a wildlife range

1/ The application was filed pursuant to the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1-270-3 (1970), and the pertinent regulations in 43 CFR Part 2561. The Allotment Act was repealed by section 18 of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617 (1976). 2/ The lands were "segregated" from appropriation under the public land laws by the notation on the Land Office records. The regulations, 43 CFR 295.10(a) (1954), provided:

"§ 295.10 Segregative effect of application by Federal or State agency.

"(a) The recording in the serial register and the noting on the official plats and in the tract books maintained by the land office for the area, or by the Washington Office of the Bureau of Land Management if there is no land office for the area, of information indicating that an application for the withdrawal or reservation of lands has been received from a Federal or State agency shall temporarily segregate such lands from settlement, location, sale, selection,

withdrawal application, F-012151, was noted to the records. Public Land Order No. (PLO) 2213 of December 8, 1960, established the Clarence Rhodes National Wildlife Range and reserved the land as a wildlife refuge. The decision rejected the application for the stated reason that the applicant, who was 5 years old when the land was segregated, did not assert 5 years of independent control and use of the land prior to its withdrawal. 3/

fn. 2 (continued)

entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal. To that extent, action on all prior applications, the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken. Such temporary segregation shall not affect the administrative jurisdiction over the segregated lands.

3/ It is no longer necessary that an applicant for a Native allotment show 5 years substantial use and occupancy prior to the closure of land to appropriation under the public land laws. We stated in Bella Noya, 42 IBLA 59, 61-2 (1979), as follows:

"The foregoing skirts the legal issue before us which is whether under the Native Allotment Act the appellant has completed substantial use and occupancy as an independent citizen or family head prior to the withdrawal of the land. Although earlier decisions e.g., Susie Ondola, 17 IBLA 359 (1974); Christian G. Anderson, 16 IBLA 56 (1974), embody the requirement of the Secretarial guidelines of October 18, 1973, that a Native must have initiated and completed substantial use and occupancy of the land for 5 years prior to a withdrawal or reservation, Secretarial Order No. 3040 of May 25, 1979, abolishes that 5-year requirement reciting in part:

'Sec. 3 Policy Decision. A. I have undertaken a review, with the Solicitor, of the five-year prior rule. I have approached the review from the premise that the Alaska Native Allotment Act was an act passed for the benefit of Natives and should, therefore, be liberally construed in favor of Natives. The Act itself does not contain the five-year prior rule as an express requirement. The policy appears to have originated as a result of the exercise of agency discretion. Since it was issued, however, the United States [C]ourt of Appeals for the Ninth Circuit has ruled, in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), that the range of the Department's discretion in dealing with Native allotments is narrower than was previously supposed. Whether or not the five-year prior rule is a proper exercise of the Department's discretion, it is not consistent with my policy, that of liberally construing acts passed for the benefit of Natives.

'B. Accordingly, I hereby rescind the five-year prior rule in favor of a rule which merely requires that the full five years use and occupancy must be completed prior to the granting of the Native allotment application, provided that the applicant has either filed for a Native allotment or commenced use and occupancy prior to a withdrawal of the land."

The statement of reasons argues that the applicant's father and ancestors used the land for many years prior to 1955 and that ancestral use may be tacked on to avert the segregation effect of PLO 2213.

[1] The issue of tacking is well settled. An allotment right is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment may not tack on use and occupancy of the land by his ancestors to establish his right. Floyd L. Anderson, Sr., 41 IBLA 280 (1979); James S. Picnalook, Sr., 22 IBLA 191 (1975); Emma Moses, 21 IBLA 264 (1975); Louis P. Simpson, 20 IBLA 387 (1975); Anne McNoise, 20 IBLA 169 (1975); Larry W. Dirks, 14 IBLA 401 (1974). Cf. United States v. Arenas, 158 F.2d 730 (9th Cir. 1947), cert. denied, 331 U.S. 842 (1947); Woodbury v. United States, 170 F. 302 (8th Cir. 1909).

Appellant argues in the alternative that his own use and occupancy are sufficient under the Allotment Act, 43 U.S.C. § 270 (1970).

[2] The land in issue was not open to occupancy after 1955, and therefore appellant could initiate no rights thereto by settlement, use, or occupancy commenced in 1959. In addition, since applicant was only 5 years old in 1955, he was too young, as a matter of law, to have used and occupied the land independently and to the exclusion of others. Floyd L. Anderson, Sr., supra, and cases cited. Consequently the application must be rejected.

Appellant next argues that the withdrawal effected by PLO 2213 did not include the lands for which he applied. Appellant points out (as did the decision below) that the withdrawal effected by PLO 2213 protected Native uses of the land.

[3] The text, of the relevant part of PLO 2213 is as follows:

Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, Provided, That the reservation made by this order shall not prohibit the hunting or trapping of game animals and game birds or the trapping of fur animals in accordance with the provisions of applicable law and as may be permitted by regulations of the Secretary of the Interior prescribed and issued pursuant thereto:

* * * * *

. . . This order shall not be construed to abrogate or impair any legal or aboriginal claim of right of the natives to use the lands, if any, and they may hunt, fish, and trap in accordance with applicable law, and carry on any other lawful activities. [Emphasis supplied.]

The language of the Public Land Order does not support the argument appellant has made. It clearly withdraws the subject lands from all forms of appropriation -- one of which is a Native allotment -- while preserving to Natives certain specified uses. These uses are not synonymous with appropriation of the land.

[4] Appellant states that he "can submit evidence" of ancestral use, and that "a hearing has been requested." However, the legal conclusions reached in this decision are based upon undisputed facts. There has been no proffer of further facts which could compel different legal conclusions. It appears, therefore, that no useful purpose would be served by a hearing, and the request therefore is denied. Floyd Anderson, Sr., supra, and cases cited.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

